



DATE: November 19, 2008

TO: Personnel Officers

**SUBJECT: PROCEDURES FOR REQUESTING AND/OR PROCESSING
WITHHOLDS FROM CERTIFICATION**

The purpose of this memorandum is to provide clarification and direction to departments seeking to withhold candidates from certification subsequent to their successful participation in an examination. Government Code Section 18935 (copy attached) states that the State Personnel Board (SPB) may refuse to examine, or after examination may refuse to declare as an eligible, any candidate who fails to meet certain specified criteria. In addition, the State may withhold candidates who have committed certain acts which would cause those individuals to be undesirable or unsuitable for employment with the State. While SPB oversees the withhold process, departments have limited delegated authority subject to review by SPB.

Currently, all departments have delegated authority to withhold candidates from certification for failure to meet minimum qualifications. For the purposes of delegated authority, failure to meet minimum qualifications refers to the minimum qualifications patterns listed on the class specifications. Only the department that "owns" the eligible list may process a withhold from certification for that specific list.

If the withhold action is for any cause other than failure to meet one of the minimum qualifications patterns listed on the class specification, departments are required to submit a written withhold request to SPB. The SPB Investigations Unit reviews these requests and processes them if deemed appropriate.

WITHHOLDS FOR FAILURE TO MEET MINIMUM QUALIFICATIONS

Prior to making an appointment, departments are required to verify **every** candidate's minimum qualifications. This includes requesting a copy of college transcripts or proof of a college degree, if applicable, and proof of the candidate's claimed work experience, certifications, licenses, etc. If, subsequent to completion of an exam administration, a department determines that a candidate did not meet minimum qualifications to compete in the exam, the department is required to notify the candidate in writing that he/she will be withheld from certification. The letter to the candidate must include the following:

- a) Classification name;
- b) Candidate's list accession date;
- c) Specific reason(s) that the eligible did not meet minimum qualifications, clearly outlined;
- d) Citation of the relevant legal authority [Government Code Sections 18935(a) and (n)]; and
- e) Notification of the eligible's right to appeal the withhold action to the SPB Appeals Division within 30 days of the date of the withhold notice. The letter should include the Appeals Division telephone number (916-653-0799), and address (Appeals Division, State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814).

Once the withhold notification letter has been mailed, the department's transaction staff should enter the withhold on the candidate's eligible record using an H1 transaction.

WITHHOLDS FOR CAUSES OTHER THAN MINIMUM QUALIFICATIONS

Departments are responsible for the investigation/background check of each candidate's suitability and eligibility for employment in the subject classification. If the result of a background check warrants the removal of a candidate from an eligible list, the testing department is required to submit a written request for withhold to the SPB Investigations Unit. Requests for a withhold should be mailed to the State Personnel Board, Investigations Unit, 801 Capitol Mall, MS-37, Sacramento, CA 95814, and should include the following information:

1. Candidate's name and mailing address
2. Last four digits of candidate's social security number
3. Classification name and class code
4. List accession date
5. Basis for the withhold request, including citation of the relevant subsection(s) of Government Code section 18935
6. An explanation of how the candidate's actions impact their suitability and/or eligibility for employment in the subject classification and/or with the hiring department
7. Supporting documentation to verify the information cited in the withhold request
8. Name and phone number of department contact
9. Mailing address of department representative who is designated to receive the department's copy of the withhold letter

Upon receipt, the SPB Investigations Unit will review the withhold request and supporting documentation. SPB staff decides each case on an individual basis taking into consideration the following factors:

1. Job-relatedness/nexus to the job;
2. Recency of act or omission;
3. Serious nature of act or omission;
4. Mitigating factors; and
5. Relevant laws and rules

If the withhold request is granted, the SPB Investigations Unit will notify the candidate in writing and enter the withhold status on the candidate's eligible record. A copy of the notification letter is also sent to the requesting department. The Investigations Unit maintains a file for each withhold which includes a copy of the notification letter, as well as the withhold request letter and supporting documents.

APPEAL RIGHTS

Candidates who are withheld from certification have the right to appeal the withhold action. When an appeal is filed, the SPB Appeals Division will notify the SPB Investigations Unit as well as the testing department. Most withhold appeals are reviewed and processed by an Appeals Division analyst. If an appeal hearing is warranted, it will be scheduled before an SPB Hearing Officer. The testing department should plan to send a representative to support the department's withhold request. A representative from the SPB Investigations Unit will also attend the hearing.

OTHER CONSIDERATIONS/ISSUES

Departments may hire any qualified candidate that is in a reachable rank. There may be times when a candidate is interviewed multiple times and the job offers simply go to other more qualified/desirable candidates. However, if a candidate is bypassed for cause without the department formally withholding them from certification, then the candidate is entitled to present a defense to these "constructive" withholds. If a department **never** intends to hire a particular candidate who is in a reachable rank because: a) the candidate does not meet minimum qualifications, or b) the candidate cannot otherwise demonstrate

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suitability or eligibility for State employment per the criteria listed in Government Code Section 18935, departments may not simply bypass the candidate, even if the candidate in question is blocking a rank. In these situations, departments must seek an official withhold so that the candidate is provided with an opportunity to contest his/her failure to secure an appointment.

If you have questions or need further clarification regarding delegation of withhold authority, or the procedures for submitting a withhold request to SPB, please contact Roberta Nishimura, SPB Investigations Unit, at rnishimura@spb.ca.gov. Ms. Nishimura can also be reached by telephone at (916) 653-1220 or TTY (916) 654-6336.

A handwritten signature in dark ink, appearing to read "Suzanne M. Ambrose", with a long horizontal flourish extending to the right.

Suzanne M. Ambrose
Executive Officer

Enclosure